APPENDIX A

General Statutes of Kansas, 1949

Sections Involved*

Section 34-223 (in part).

"*Definitions in part.* In this act, unless the context or subject matter otherwise requires: . . . 'Holder' of receipt means a person who has both actual possession of such receipt, and a right of property therein. . . . " [p. 1105]

Section 34-229.

"*Warehouseman bond.* Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000:

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* The page reference in brackets at the end of each quoted section refers to the page on which such section begins in Corrick's General Statutes of Kansas (Annotated) 1949.

Provided, that whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial condition, it shall be his duty to require a substituted or additional bond as he shall deem necessary." [p. 1105]

Section 34-238.

"*Persons who may issue receipts; printing of receipts; revenue to state treasurer.* Warehouse receipts may be issued by any licensed public warehouseman, as herein defined, and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act. All of the expense incurred shall be paid by the state grain inspection department out of the state grain inspection revolving fund, and he shall distribute such warehouse receipts printed to the licensed public warehouses at cost, and the revenue from such distribution shall be by said chief inspector remitted to the state treasurer and credited to the state grain inspection revolving fund in the same manner as other fees collected. It shall be unlawful for any public warehouseman to issue any warehouse receipts for any grain received except upon warehouse receipts furnished by the state grain inspection department on and after June 1, 1939: *Provided,* That nothing in this section shall be construed to affect the legality or validity of any receipt, or re-

ceipts, issued under authority of this act if the same contains all the provisions required by section 34-239 of the General Statutes of 1935, and issued before June 1, 1939." [p. 1108]

Section 34-239.

"*Form of receipt for storage grain.* Every receipt issued for grain stored in a warehouse licensed under this act shall embody within its written or printed terms: (a) The location of the warehouse where the grain is stored; (b) the statement whether the grain received will be delivered to bearer, to a specified person, or to a specified person or his order; (c) the date of the issuance of the receipt; (d) the rate of the storage charges or the basis for such charges; (e) the net weight and percentage of dockage, together with the grade; (f) the words, nonnegotiable, not negotiable, or negotiable, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (g) the signature of the warehouseman which may be made by his authorized agent; (h) if the receipt for grain of which the warehouseman is owner either wholly or jointly, or in common with others, the facts about such ownership; (i) a statement of the amount of the advances made or the liability incurred, for which the warehouseman claims a lien, but if the precise amount of such advances made, or of such liabilities incurred, be at the time of the issuance of the receipts unknown to the warehouseman, or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby for all damages caused by the omission from a negotiable receipt of any of the terms herein required." [p. 1108]

Section 34-240.

"*Warehouseman's receipt on own grain valid.* Any public warehouseman operating a warehouse in this state may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of such ownership in the receipts shall constitute notice to all the world of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by such receipts, provided that said receipts are registered according to the provisions of this act." [p. 1108]

Section 34-244.

"*Definition of negotiable receipt.* A receipt in which it is stated that the grain received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provision shall be inserted in a negotiable receipt that will make it non-negotiable. Such provisions, if inserted, shall be void." [p. 1109]

Section 34-246 (in part).

"*Issuance and cancellation of receipts; division and consolidation.* That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. . . . " [p. 1109]

Section 34-248.

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by

twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and showing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided,* That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further,* That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner, either solely, jointly or in common with others. And is [it] shall be unlawful for any grain warehouseman to limit or modify his responsibility imposed by law by any words inserted in any such receipt or by any contract relative thereto. Upon receipt of such report, as hereinafter provided, and warehouse receipts, it shall be the duty of the registrar of warehouse receipts to register such legal receipts in a book to be kept for that purpose and to stamp on each of such receipts with the official state grain inspection department registration stamp the word 'registered' with the date of registration and affix his signature thereto." [p. 1110]

Section 34-250.

"*Obligation of warehouseman to deliver.* A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the grain upon a demand made either by the holder of a receipt for the grain, or by the depositor, if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be neces-

sary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the grain is delivered, an acknowledgment that it has been delivered, if such acknowledgment is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the grain in compliance with the demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal." [p. 1110]

Section 34-290.

"*Issuance of receipt for grain not received; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who issues or aids in issuing a receipt knowing that the grain for which such receipt is issued has not been actually received by such warehouseman, or is not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by fine not exceeding $5,000, or both." [p. 1114]

Section 34-291.

"*Issuance of receipt containing false statement; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for grain, knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both." [p. 1114]

Section 82-120.

"*Nonexistence of goods or failure to correspond to description in receipt.* A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods

to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor." [p. 2729]

Section 82-157.

"*Construction of warehouse receipts act.* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [p. 2733]

Section 82-158 (in part).

"*Definition of terms.* (1) In this act, unless the context or subject matter otherwise requires, . . . 'holder' of a receipt means a person who has both actual possession of such receipt and a right of property therein; . . . " [p. 2733]

APPENDIX B

Opinion and Judgment of the Court of Appeals

1. OPINION

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 5403—September Term, 1956

CENTRAL STATES CORPORATION, *Appellant*,

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Appellee*.

Appeal from the United States District Court for the District of Kansas

Samuel Morgan (Kahrs & Nelson were with him on the brief) for appellant.

Gerrit H. Wormhoudt (Howard T. Pleeson, Homer V. Gooing, Wayne Coulson, Paul R. Kitch, Dale M. Stucky and Donald R. Newkirk were with him on the brief) for appellee.

Before BRATTON, Chief Judge, and PHILLIPS and LEWIS, Circuit Judges.

PHILLIPS, Circuit Judge.

On August 4, 1951, Trinity Universal Insurance Company[1] issued a State of Kansas Grain Public Warehouse Bond in the principal amount of $130,000, covering the operation by the Garden Grain and Seed Company[2] of grain elevators as public warehouses at Garden City, Kansas Air Base and Pierceville, Kansas. On October 30, 1951, the Insurance Company issued a like bond in the principal amount of $5,000, covering the operation by the Seed

[1] Hereinafter called the Insurance Company.

[2] Hereinafter called the Seed Company.

Company of an elevator as a public warehouse, at Ingalls, Kansas.

The Insurance Company brought an action of interpleader against Central States Corporation[3] and others who asserted claims against it under its bonds, asking a determination of its liabilities under the bonds to such claimants.

Central filed an answer in which it sought recovery on the $130,000 bond, on account of certain unregistered warehouse receipts issued to it by the Seed Company. In its answer Central alleged that on November 29, 1951, it purchased from the Seed Company 50,000 bushels of #2 milo at $2.35 cwt. and paid therefor the sum of $65,800 and that as a part of the same transaction the Seed Company on the same day issued to it ten unregistered public warehouse receipts, numbered 164 to 173, inclusive, in the form prescribed and authorized by the law of Kansas. Central further alleged that on December 15, 1951, it purchased from the Seed Company 50,000 bushels of #2 yellow milo at $2.46 cwt. and paid therefor the sum of $68,800, and that as a part of such transaction the Seed Company on the same day issued to Central ten unregistered public warehouse receipts, numbered 179 to 188, inclusive, in the form provided by the law of Kansas.

Such unregistered receipts recited that the Grain Company had received in storage from Central a designated number of bushels of milo, subject to the order of Central. Each of the receipts also contained the following recital:

> "The undersigned warehouseman is not the owner of the grain covered by this receipt, either solely, jointly or in common with others: * * * ."

Central further alleged that the amount paid by it to the Seed Company for milo represented by such receipts, after giving full credit for milo delivered to it by the Seed Com-

[3] Hereinafter called Central.

pany, is $220,875.71 and sought recovery on the $130,000 bond for the full amount thereof.

The trial court granted a summary judgment in favor of the Insurance Company. Central has appealed.

At the hearing on the motion for summary judgment Central filed an affidavit of defense. It attached to such affidavit a transcript of the testimony of A. P. Emrie, Chief Grain Inspector of the State of Kansas, given in the examination of the Seed Company, Bankrupt, in the bankruptcy proceedings, which showed that the Grain Inspector had authorized the Seed Company to issue unregistered receipts and furnished the forms for such receipts in triplicate, one copy to be delivered to the person taking the receipt, one copy to be retained by the Seed Company and one copy to be forwarded to the Grain Inspection Department for the State of Kansas. The receipts were sent to Central with sight draft attached and Central received the receipts when it honored the sight draft.

In its affidavit of defense Central averred:

> "D. That in each of the transactions between Central * * * and * * * Seed Company * * * the latter used the moneys paid by Central * * * to purchase milo; that in each instance the said milo so purchased was deposited in the warehouses of * * * Seed Company * * * ; that in each instance the said deposit was purported to be made for and on behalf of Central * * * ; that in each instance warehouse receipts were issued reciting that the grain so deposited had been 'received in store' 'from Central States Corp.'; that each of the warehouse receipts so issued to Central * * * was on an official form prescribed and printed by the State of Kansas, each purported to be negotiable, and each bore the caption, 'Uniform Unregistered Bailment Local Public Warehouse Receipt'; that as Central * * * required grain for its distilling operations, it would draw upon the deposits of milo evidenced by its said warehouse receipts; that storage charges were paid by Central * * * on all grain not so withdrawn by it; that at no time was Central * * * aware that

milo had not been deposited for and on its behalf by * * * Seed Company, in the amounts specified in the said warehouse receipts; that in all its transactions with * * * Seed Company, Central * * * acted in good faith and without knowledge of any dereliction on the part of * * * Seed Company."

Thus, it will be seen that in its answer Central alleged that it purchased milo from the Seed Company and received unregistered receipts therefor, while in its affidavit of defense Central averred that it furnished money to the Seed Company, with which the Seed Company was thereafter to purchase milo, while the receipts were issued at the time the money was furnished.

The Seed Company did not have milo in storage for which it issued receipts to Central and after it received the money from Central it did not thereafter purchase milo and place it in the warehouse to the credit of Central.

Section 34-248, General Statutes of Kansas Annotated, 1949, provides in part:

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and showing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided*, That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further*, That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner, either solely, jointly or in common with others. * * * "

Section 34-246, General Statutes of Kansas Annotated, 1949, provides in part:

> " • • • That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. • • • "

Section 34-290, General Statutes of Kansas Annotated, 1949, makes it a criminal offense for any warehouseman to issue or aid in the issuance of a warehouse receipt, knowing that the grain for which such receipt is issued has not been actually received by such warehouseman or is not under his actual control at the time of the issuance of such receipt.

Section 34-291, General Statutes of Kansas Annotated, 1949, makes it a criminal offense for a warehouseman or any officer, agent or servant of a warehouseman fraudulently to issue a receipt for grain, knowing that it contains a false statement.

Central did not deliver any grain to the Seed Company at the time it received the unregistered receipts and honord the sight drafts attached thereto, or at any other time; the Seed Company issued unregistered receipts to Central for grain which it did not actually have in storage; and Central knew those facts at the time it received the receipts and honored the sight drafts.

Central States Corporation v. Luther, 10 Cir., 215 F. 2d 38, was an action brought by Central for the possession of grain and funds in the possession of the trustee in bankruptcy for the Grain Company, predicated on the receipts involved in the instant case.

In its opinion the court said, at page 42:

> " • • • It will be observed with poignant significance that the pertinent language contained in the act in respect to receipts not being issued unless the grain has been actually deposited with the warehouseman and is under his control as well as the language in re-

spect to receipts issued for grain of which the warehouseman is the owner being registered, is not directory or permissive. Such provisions in the act are unequivocal, mandatory, and imperative. And they represent the considered public policy of the state in respect to the matters falling within their compass."

The court held that since Central did not deliver any grain to the bankrupt for storage and no physical deposit of grain was ever made, the receipts were invalid.

Fidelity State Bank v. Central Surety & Ins. Corp., 10 Cir., 228 F. 2d 654, was an action brought by the Insurance Corporation for determination of its liability under warehouseman's bonds covering the operations of the Seed Company as a public warehouseman under the provisions of Chapter 34 of the General Statutes of Kansas, Annotated, 1949. In that case the Fidelity Bank loaned the Seed Company $45,000, evidenced by its note for that amount, secured by three public warehouse receipts, each covering 9,000 bushels of wheat. The receipts recited that the warehouseman had received the wheat in storage, subject to the order of the bank, upon payment of charges and surrender of the receipts. They contained a statement that the warehouseman was not the owner of the grain. The bank had never delivered any grain to the warehouseman. The receipts were not the kind of receipts authorized to be issued for grain stored in the warehouse and owned by the warehouseman. The bank contended that the Seed Company, as a public warehouseman, violated its duty as a public warehouseman in issuing the receipts and thereby failed to faithfully perform all of its duties as a public warehouseman, in violation of the condition of the bond.

In affirming the judgment below, which denied recovery, the court, in its opinion said, at pages 656, 657:

"The bank deposited no grain in the elevator for storage, and the receipts which it accepted could relate only to grain which the bankrupt represented that it owned. A warehouseman may under Section 34-240

pledge his grain through the medium of warehouse receipts. He may do this, however, only by a strict compliance with the statute. He must strictly follow the requirements of the statute as to registration of the receipts. One who accepts receipts from the warehouseman which have been issued contrary to the statutory requirements, may not be heard to say that he had no notice that there was no compliance with the provisions of the Act. If the receipt is for grain purportedly owned by the warehouseman, the person who accepts it is bound to know that it must recite that the warehouseman is the owner, either solely or jointly or in common with others, and he must be held to know that the receipt which he accepts is registered or unregistered. • • •

• • • • •

" • • • If transactions like those in this case are upheld, the holders of invalid receipts may make a claim against the bondsman of the warehouseman, and the protection sought to be given those who store grain in warehouses or purchase valid warehouse receipts, could be destroyed. The examining officials could not effectively inspect and balance the amount of grain held by the warehouseman against outstanding warehouse receipts or other evidences of title to grain issued by the warehouseman. It seems to us that the statutory provisions for obtaining a warehouseman's license and governing transactions relating to grain in storage, either as bailee or owner, were designed to prevent such transactions as occurred between the bank and the grain company and any one participating in such transactions is not entitled to the protection of the Act."

Here, Central was bound to know that the unregistered receipts had been issued to it for grain that was not in the warehouse and that they were, therefore, issued contrary to law and were invalid.

We conclude that Central was not entitled to recover on the bond and, accordingly, the judgment is affirmed.

2. Judgment

Eighteenth Day, September Term, Saturday, October 6th, 1956.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable Orie L. Phillips and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Kansas and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

FILED
FEB 2 1957
JOHN T. FEY, Clerk

BRIEF FOR RESPONDENT IN OPPOSITION.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 671.

CENTRAL-STATES CORPORATION, *Petitioner,*

vs.

TRINITY UNIVERSAL INSURANCE COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

Judgment was entered by the United States District Court for the District of Kansas without opinion. The opinion of the Circuit Court of Appeals for the Tenth Circuit is reported at 237 F. 2d 875 (Advance Sheets), and is included in the Appendix to the Petition.

JURISDICTION.

The jurisdiction requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Whether the Court below correctly applied the law of the State of Kansas in determining the validity of certain warehouse receipts obtained by the petitioner from a grain warehouseman licensed and operating under the laws of Kansas.

STATUTES INVOLVED.

The pertinent statutory provisions of the General Statutes of Kansas, 1949 (hereinafter referred to as "G. S. Kan., 1949"), are Sections 34-229, 34-238, 34-239, 34-240, 34-246, 34-247, 34-248, 34-291 and 34-293. These sections are printed as an Appendix to this brief (pp. 14-19).

STATEMENT OF THE CASE.

This is the second time that this petitioner has requested this Court to review a decision of the Court below holding that certain grain warehouse receipts obtained by petitioner were invalid under the laws of Kansas. See *Central States Corp.* v. *Luther*, 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438. Prior to its decision in the instant case, the Court of Appeals for the Tenth Circuit decided six other appeals, including the prior appeal by petitioner, arising out of the bankruptcy of the issuing warehouseman, the Garden Grain & Seed

Company, Inc., of Garden City, Kansas (See *Central States Corp.* v. *Luther,* 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438; *Inter-State National Bank of Kansas City* v. *Luther,* 221 F. 2d 382 (C. A. 10, 1955), cert. granted, 350 U. S. 810, 100 L. Ed. 726, 76 S. Ct. 77, dismissed 350 U. S. 944, 100 L. Ed. 823, 76 S. Ct. 297; *First National Bank in Wichita* v. *Luther,* 217 F. 2d 262 (C. A. 10, 1954); *United States* v. *Luther,* 225 F. 2d 499 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321; *Luther* v. *United States,* 225 F. 2d 495 (C. A. 10, 1955), cert. den. 350 U. S. 947, 100 L. Ed. 825, 76 S. Ct. 321; *Fidelity State Bank* v. *Central Surety & Ins. Corp.,* 228 F. 2d 654 (C. A. 10, 1955)). In the statement of facts contained in the Petition mention is made of dissents filed in two of the cases and of the fact that certiorari was granted in one of them (Petition, p. 8). But petitioner does not inform the Court that the dissenting judge in petitioner's bankruptcy appeal concurred in the majority holding that petitioner's warehouse receipts were invalid under Kansas law, and that the dissents in the Inter-State Bank case were confined to the power of the bankruptcy court to adjudicate two unlawful preferences, 215 F. 2d 38, at p. 46, and 221 F. 2d 392, at p. 397. Nor does the petitioner disclose that the Petition for Writ of Certiorari of the Inter-State Bank, which was granted and then dismissed, did not seek review of that part of lower court's decision concerning the validity of its warehouse receipts. See Petition for Writ of Certiorari, October Term, 1955, No. 242. On the other hand, the petitioner in the instant case did seek review of the ruling on the validity of its warehouse receipts in its former petition, which was denied. See Petition for Writ of Certiorari, October Term, 1954, No. 514.

The warehouse receipts accepted by petitioner, copies of which were attached to petitioner's answer (R. 27), were

held invalid in the bankruptcy proceedings and in the instant proceeding because they were issued and accepted in violation of the comprehensive enactments of Kansas governing the licensing and operation of grain warehousemen. G. S. Kan., 1949, 34-220, *et seq.* The Kansas Grain Warehousing Act prohibits the issue of any receipt except upon grain delivered into store. G. S. Kan., 34-246, Appendix, p. 17. The Act provides that all receipts issued by a warehouseman operating under the Act must first be registered with a Registrar of Receipts, provided that the Chief Grain Inspector may authorize the use of unregistered receipts for grain *not* owned by the warehouseman. G. S. Kan., 1949, 34-248, Appendix, p. 17. The Registrar of Receipts, after recording registered receipts, stamps them with the official department stamp bearing the word "registered," and affixes his signature thereto and the date of registration. G. S. Kan., 1949, 34-248, Appendix, p. 17. Every receipt for the warehouseman's own grain must be registered, and any sale or pledge of the warehouseman's own grain through the medium of warehouse receipts, to be valid, must be of registered receipts. G. S. Kan., 1949, 34-240 and 34-248, Appendix, pp. 16-17.

The receipts attached to petitioner's answer in respondent's interpleader action showed on their face that they were unregistered, and it is admitted that the receipts falsely recited that the petitioner had deposited the amount of grain stated thereon with the warehouseman (R. 27-29, 24-25, 35, 46). At the time the receipts were issued to the petitioner the warehouseman owned no grain of its own for which receipts could be issued (R. 34).

On petitioner's bankruptcy appeal it was held that petitioner was charged with knowledge as a matter of law that its warehouse receipts were illegally issued, and that

accordingly, petitioner could not participate with actual depositors of grain in the grain fund held by the trustee in bankruptcy. *Central States Corp.* v. *Luther*, 215 F. 2d 38 (C. A. 10, 1954), cert. den. 348 U. S. 951, 99 L. Ed. 743, 75 S. Ct. 438. This holding was followed in a companion interpleader action filed by a prior statutory bondsman for the bankrupt (*Fidelity State Bank* v. *Central Surety & Ins. Corp.*, 228 F. 2d 654 (C. A. 10, 1955)), and was again applied in the instant action in the nature of interpleader filed by respondent for the purpose of determining its liability to the numerous creditors of the bankrupt.

ARGUMENT.

I.

The Decision Below Is Clearly Correct.

A. The Court Below Correctly Determined the Validity of Petitioner's Warehouse Receipts Pursuant to the Statutory Provisions Specifically Governing Grain Warehousing Transactions in Kansas.

The Court below, in deciding the petitioner's bankruptcy claim and its claim in this appeal, was faced with the question of determining whether, under Kansas law, petitioner could claim the protection of that law so as to enable it to participate with depositors of grain in the grain fund acquired by the trustee in bankruptcy or in the proceeds of the statutory bond executed by this respondent.

Determination of the applicable Kansas law was simple. Although Kansas enacted the Uniform Warehouse Receipts Act in 1909 to govern warehouse transactions generally, it has enacted separate and special provisions comprehensively regulating the warehousing of grain because of the importance of that particular industry in the State. The

history of Kansas grain warehousing legislation is discussed at length by the Supreme Court of Kansas in *Kipp* v. *Goffe & Carkener*, 144 Kan. 95, 58 P. 2d 102 (1936). After reviewing prior grain warehousing legislation, the Court dismisses general warehousing acts as irrelevant to grain transactions:

> "In our Revised Statutes of 1923 all our statutes then in force specifically relating to the inspection, handling and storing of grain in public warehouses were collected in chapter 34, article 1 of which contained the sections relating to inspection, and article 2 those specifically relating to the storage of grain in public warehouses. In 1931 article 2 of chapter 34 of the Revised Statutes of 1923 was revised generally (Laws 1931, ch. 194).
>
> "In the meantime several acts pertaining to warehouses generally had been enacted containing some provisions applicable to the storage of grain. For example, see chapter 224 of the Laws of 1905, amended by chapter 186 of the Laws of 1911. *Our legislature also enacted the 'warehouse receipts act,' which had been drafted by the commission on uniform laws (Laws 1909, ch. 262), and supplemented that by a later act (Laws 1927, ch. 340), which specifically provided (Sec. 11) that it shall not be construed as in any way affecting, altering, or amending chapter 34 of our Revised Statutes of 1923.* So, while these general warehouse acts appear to overlap some of the sections of our statutes hereinbefore referred to relating to the inspection, handling and storage of grain, the legislature has kept them fairly well segregated.
>
> "Chapter 194 of the Laws of 1931, R. S., 1933 Supp., 34-223 *et seq.*, was in force during the time of the transactions involved in this action, and we regard it as being the statute necessary to be considered in connection with the evidence in this case in determining whether plaintiff stored or sold his wheat to Dillon.

> As we have seen, this is the latest revision of a series of statutes beginning in 1891 by which the state, in the public interest, has undertaken to regulate the inspection, grading, weighing, handling and storage of grain, including public warehouses therefor—what constitutes such warehouses, under what conditions they may be operated, the issuance and keeping a record of warehouse receipts, and the rights and duties of the respective interested parties in relation thereto." (Italics ours) (144 Kan. 95, at 102-103, 58 P. 2d 102, at 106-107).

The Kipp case was cited with approval in a recent Kansas decision handed down shortly after the Court below decided the petitioner's bankruptcy appeal. *Shugar* v. *Antrim*, 177 Kan. 70, at 74, 276 P. 2d 327, at 375.

In view of the lengthy history of special grain warehousing legislation in Kansas and in the light of the foregoing decision by the highest court of that State holding that grain transactions are governed by the special warehousing laws pertaining to the storage of grain, we can offer no explanation for petitioner's insistence that the Court below should have applied the provisions of the Uniform Warehouse Receipts Act to its grain receipts. Petitioner may choose to ignore the existence of the special grain warehousing statutes of Kansas and the decisions of the Kansas Supreme Court on the subject, as it does in its Petition, but the Court below was required to heed them, and did so.

B. The Court Below Properly Ruled That Petitioner Could Not Claim the Protection Afforded by the Kansas Grain Warehousing Act.

Petitioner accepted unregistered warehouse receipts which falsely recited that the grain stated thereon had been "Received in store * * * from Central States Corp." as "De-

positor and Bailor." (R. 27, 46). The receipts also stated that the warehouseman was not the owner of the grain, in whole or in part (R. 27). The Kansas Grain Warehousing Act specifically provides "That no warehouse receipt shall be issued except upon actual delivery of grain into store * * *." G. S. Kan., 1949, 34-246, Appendix, p. 17. The act further provides that the warehouseman's own grain can only be sold through the medium of warehouse receipts after such receipts have first been registered, and it is a criminal offense for anyone to issue receipts for the warehouseman's own grain on forms which do not indicate the warehouseman's ownership. G. S. Kan., 1949, 34-293, Appendix, p. 18.

The petitioner cannot escape its dilemma. If it stands on its own receipts, it must admit that the receipts falsely recite that petitioner deposited grain, and that the receipts were issued in violation of Sec. 34-246 of the Act. If it claims that it bought the warehouseman's grain through warehouse receipts, then it must admit that the receipts were unregistered and fail to state the interest of the warehouseman in the grain, all in violation of G. S. Kan., 1949, 34-240, 34-248, 34-293, Appendix, pp. 16, 17, 18. Petitioner's receipts would have been valid if petitioner had actually deposited grain, as the receipts so state (R. 27). Or, petitioner could have validly purchased grain from the warehouseman by a transfer of registered receipts which would have shown the interest of the warehouseman. The failure of the petitioner to do either helped make it impossible for the Kansas Grain Inspection Department to be informed of the warehouseman's defalcations. The provisions of the Act designed to make a warehouseman divulge his own dealings in grain by registration of receipts for his own grain are rendered meaningless if the warehouseman is allowed to issue, and anyone accepts, receipts which falsely

recite that the depositor has stored grain with the warehouseman.

The Kansas Supreme Court has made it unmistakably plain that anyone claiming the benefits of the Act must show compliance with its terms. In *Kipp* v. *Goffe & Carkener,* 144 Kan. 95, 58 P. 2d 102, the plaintiff stored grain with a warehouseman, one Dillon, who was not licensed under the Kansas Grain Warehousing Act. The defendant purchased the grain from the warehouseman and the plaintiff sought to recover from the defendant as a converter of the plaintiff's grain. The Court held that the action would not lie because Dillon, the warehouseman, had no authority to store grain and the plaintiff was charged with knowledge of such want of authority as a matter of law.

> "A similar question was before the Louisiana supreme court recently in *Supervisor of Public Accounts* v. *Patorno W. & D. Corp.,* 181 La. 814, 160 So. 423, where the court had to construe a statute much like the one before us, except that it pertained to the storage of goods, chattels, merchandise and crude petroleum. It defined a public warehouseman as one 'lawfully' engaged in storing such goods, and as a condition precedent to his doing such business, required him to make application, give bond, and procure a license. He had done this and had procured a license to operate a public warehouse at a specified location. He stored wines at another location and issued a warehouse receipt therefor. The court held the warehouse receipt to be void because of lack of power or authority of the warehouseman to issue it. Generally, it is held that warehouse receipts are invalid when issued by one who had no right or authority to issue such receipts."

* * *

"Appellee argues that his rights are not affected even if Dillon were guilty under the penal provisions of the statute (Laws 1931, ch. 194, sec. 9). Perhaps if Dillion were guilty plaintiff also was guilty as an aider or abettor." (144 Kan. 95, at 104-105, 58 P. 2d 102, at 108).

"The evidence discloses Dillon knew he had never complied with the law, and that he was not doing business as a local public warehouseman. Plaintiff, dealing with Dillon, was bound also to know that fact, for the reason that he is bound generally to know the law of the state, and furthermore, had it been a public warehouse the license therefor would have been posted in a conspicuous place in the office room of the elevator. Hence, both of the parties knew that Dillon had no right, power, or authority as a public warehouseman to receive grain for storage or transfer for the public." (144 Kan. 95, at 106, 58 P. 2d 102, at 109).

"The statute (Laws 1931, ch. 194) is designed to be a beneficial one. Had Dillon complied with it he could have received plaintiff's grain for storage, and plaintiff would have been protected not alone by Dillon's financial ability but by his bond. The benefits of the statute will result from complying with it; not by ignoring it and rendering it nugatory. Plaintiff could not so deal with Dillon as to aid and abet him in violating it and then reap all the benefits he could have obtained if the statute had been complied with." (144 Kan. 95, at 107-108, 58 P. 2d 102, at 109-110).

Implicit legislative approval of the Kipp decision and of the decision of the Courts below on petitioner's bankruptcy claim is found in the subsequent legislative revision of the Kansas Grain Warehousing Act. Laws of Kansas, 1955, Chapter 233, G. S., 1955 Supp., Chapter 34, Articles 1, 2. The amendments are confined to changes

in the State Grain Inspection Department, procedure for licensing and bonding of grain warehousemen, storage charges and criminal offenses. No attempt has been made to modify the ruling of the Kipp case and of the Courts below that anyone transacting business with a warehouseman subject to the provisions of the Act is charged with knowledge of its terms as a matter of law and must show compliance with the Act before invoking its protection.

In petitioner's bankruptcy appeal and in the instant case, the Courts below correctly ruled that, under the governing Kansas legislation, as construed by the highest Court of that State, petitioner's warehouse receipts were invalid and would not permit petitioner to claim the protection of the Act. The Kipp case fairly encompassed every issue here presented and presented below, and those issues were all resolved against petitioner by the Kansas court. The decision of that Court was merely applied by the Court below, which was bound to do so.

II.

There Is No Important Question of Federal Law Involved.

The questions presented by petitioner imply that a federal question is here involved (Petition, p. 2). Complaint is made of the failure of the Court below to apply the Uniform Warehouse Receipts Act in the instant case, and a decision of this Court expressing the purposes of the Uniform Act is quoted (Petition, pp. 8-9, citing *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust*, 239 U. S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916). But, in view of petitioner's failure to discuss the Kansas decisions holding that grain warehousing transactions are governed by other legislation in Kansas, we believe it apparent that petitioner has misconceived the obligations of

a federal court in this situation. While petitioner may personally question the wisdom of the particular method adopted by the Kansas legislature for the issuance of grain warehouse receipts and the logic of the decisions of Kansas Courts in construing the legislative enactments, it cannot expect the federal courts to do other than follow state law, unless it conflicts with federal power.

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts." (*Erie Railroad Company* v. *Tompkins*, 304 U. S. 64, 78, 82 L. Ed. 1188, 1194).

No hint of collision between state and federal power can be found in this action. All that was involved below was the application of unique Kansas law to transactions occurring in Kansas. The questions raised by petitioner concerning the validity of its warehouse receipts and the obligations imposed upon it under Kansas law have all been answered adversely to petitioner by Kansas authorities, to which the Courts below consistently and unanimously adhered. No matter how highly they are magnified here, the questions resolved below, confined to Kansas grain warehousing transactions, cannot be transformed into federal problems.

CONCLUSION.

The decision below correctly applied Kansas law specifically governing the Kansas transactions involved. The questions presented do not warrant review by this Court.

For the foregoing reasons we respectfully submit that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent.

Date _____

APPENDIX.

General Statutes of Kansas, 1949.

Section 34-229.

"*Warehouseman bond.* Every applicant for a public warehouse license shall promptly, upon notification by said chief inspector of the amount of bond required, file with said chief inspector his bond with good corporate surety qualified under the laws of the state of Kansas in such sum, not less than $5,000 nor more [than] $50,000, for the penal sum of no less than 10¢ per bushel upon the capacity of the warehouse, except as hereinafter provided, as shall be designated by said chief inspector, said bond to be in favor of the state of Kansas for the benefit of all persons interested, or to their legal representatives, attorneys, or assigns, conditioned for the faithful performance of all his duties as such public warehouseman. In case any person shall make application for licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of such bond shall be the total amounts which would be required for the several applications if separate bonds were given, except when such amount would be in excess of $100,000, then said chief inspector may stipulate the amount of bond required above $100,000: *Provided*, that whenever said chief inspector shall determine that any bond given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of such bonds then it shall be the duty of said chief inspector to require such additional bond or bonds as he shall deem necessary to provide adequate security; and in any case where said chief inspector shall deem the surety upon any warehouseman and his bond to be of impaired financial con-

dition, it shall be his duty to require a substituted or additional bond as he shall deem necessary [L. 1931, ch. 194, Sec. 7; July 1]."

Section 34-238.

"*Persons who may issue receipts; printing of receipts; revenue to state treasurer.* Warehouse receipts may be issued by any licensed public warehouseman, as herein defined, and must be issued in manner and form as provided by this act, and the form of all receipts shall be approved by the chief inspector of the state grain inspection department. The chief inspector shall be authorized to have printed by the state printer all of the warehouse receipts issued by public warehousemen licensed under this act. All of the expense incurred shall be paid by the state grain inspection department out of the state grain inspection revolving fund, and he shall distribute such warehouse receipts printed to the licensed public warehouses at cost, and the revenue from such distribution shall be by said chief inspector remitted to the state treasurer and credited to the state grain inspection revolving fund in the same manner as other fees collected. It shall be unlawful for any public warehouseman to issue any warehouse receipts for any grain received except upon warehouse receipts furnished by the state grain inspection department on and after June 1, 1939: *Provided*, That nothing in this section shall be construed to affect the legality or validity of any receipt, or receipts, issued under authority of this act if the same contains all the provisions required by section 34-239 of the General Statutes of 1935, and issued before June 1, 1939 [L. 1931, ch. 194, sec. 16; L. 1939, ch. 197, sec. 1; April 3]."

Section 34-239.

"*Form of receipt for storage grain.* Every receipt issued for grain stored in a warehouse licensed under this act shall embody within its written or

printed terms: (a) The location of the warehouse where the grain is stored; (b) the statement whether the grain received will be delivered to bearer, to a specified person, or to a specified person or his order; (c) the date of the issuance of the receipt; (d) the rate of the storage charges or the basis for such charges; (e) the net weight and percentage of dockage, together with the grade; (f) the words, nonnegotiable, not negotiable, or negotiable, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (g) the signature of the warehouseman which may be made by his authorized agent; (h) if the receipt for grain of which the warehouseman is owner either wholly or jointly, or in common with others, the facts about such ownership; (i) a statement of the amount of the advances made or the liability incurred, for which the warehouseman claims a lien, but if the precise amount of such advances made, or of such liabilities incurred, be at the time of the issuance of the receipts unknown to the warehouseman, or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby for all damages caused by the omission from a negotiable receipt of any of the terms herein required [L. 1931, ch. 194, sec. 17; July 1]."

Section 34-240.

"*Warehouseman's receipt on own grain valid.* Any public warehouseman operating a warehouse in this state may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of such ownership in the receipts shall constitute notice to all the world of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by such

receipts, provided that said receipts are registered according to the provisions of this act [L. 1931, ch. 194, sec. 18; July 1]."

Section 34-246 (in part).

"*Issuance and cancellation of receipts; division and consolidation.* That no warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued * * * [L. 1931, ch. 194, sec. 24; L. 1939, ch. 197, sec. 3; April 3]."

Section 34.247.

"*Appointment of registrar; bond.* The chief inspector may appoint some person, or persons, as registrar of receipts, who shall execute a corporate surety bond to the state of Kansas in the penal sum of $5,000, the sureties to be approved by the chief inspector, conditioned that he well and faithfully discharge all his duties as such registrar of receipts according to law and truly account for and turn over to his successor all moneys, books, files and papers that may come in his hands as such registrar and that he pay all loss and damage that may be sustained by any person or persons by reason of his neglect, failure, or refusal to properly perform the duties of his said office [L. 1931, ch. 194, sec. 25; L. 1939, ch. 197, sec. 4; April 3]."

Section 34-248.

"*Registration of receipts; issuance of unregistered receipts, when.* It shall be the duty of each and every public warehouseman issuing negotiable receipts upon receipt of any grain, to issue or cause to be issued a receipt thereof, in compliance with this act, and to by twelve o'clock the following business day, or such time that the chief inspector shall designate, file with the registrar of warehouse receipts designated by the chief inspector, a report as hereinafter provided, and show-

ing the amount of grain received, the name of the owner thereof, and the numbers of receipts therefor issued, accompanied by the warehouse receipts for registration: *Provided*, That at the option of the chief inspector, a public warehouseman may issue unregistered negotiable receipts for grain of which the warehouseman is not the owner, either solely, jointly or in common with others: *And provided further*, That a public warehouseman must, in all cases, register every negotiable receipt issued by him for grain of which the warehouseman is the owner either solely, jointly or in common with others. And is [it] shall be unlawful for any grain warehouseman to limit or modify his responsibility imposed by law by any words inserted in any such receipt or by any contract relative thereto. Upon receipt of such report, as hereinafter provided, and warehouse receipts, it shall be the duty of the registrar of warehouse receipts to register such legal receipts in a book to be kept for that purpose and to stamp on each of such receipts with the official state grain inspection department registration stamp the word 'registered' with the date of registration and affix his signature thereto [L. 1931, ch. 194, sec. 26; L. 1939, ch. 197, sec. 5; April 3]."

Section 34-291.

"*Issuance of receipt containing false statement; penalty.* A warehouseman or any officer, agent or servant of a warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for grain, knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both [L. 1931, ch. 194, Sec. 69; July 1]."

Section 34-293.

"*Issuance of receipts for warehouseman's grain which does not state that fact; penalty.* Where there

is deposited with or held by a warehouseman grain of which he is the owner, either solely or jointly, or in common with others, such warehouseman or any of his officers, agents or servants who knowing this ownership issues or aids in issuing a negotiable receipt for such grain which does not state such ownership[,] shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both [L. 1931, ch. 194, sec. 71; July 1]."